

REMARKS

Claims 1, 3, 7, 11-19 have been amended. New claims 21-28 have been added. Claims 1-9 and 11-28 are now pending.

In the Final Office Action dated July 1, 2004, rejection of claims 1-9 and 11-20 under 35 U.S.C. §103(a) as being unpatentable over Frederick (US Patent No. 5,768,126) in view of Laroche (US Patent No. 6,049,766) in further view of Bhadkamkar et al. (US Patent No. 5,893,062) and Shepard (US Patent No. 5,943,347) were maintained.

In response, Applicants have further amended claims 1, 3, 7 and 11-19 to further particularize the present invention. All amendments are fully supported by the original disclosure. No new matter has been introduced.

In particular, independent claims 1, 3, 7, 11 and 15 have all been amended to include in substance the limitation of *switching from one stream of audio data generated from sampling an audio signal under a first sampling rate to another stream of audio data generated from sampling the audio signal under another sampling rate, on detection of a change in operating condition (e.g. network bandwidth), with the first and second audio data overlapping each other (i.e. having a common portion of the audio signal).*

As explained in the specification, and readily appreciated by the Examiner, the purpose for the "overlapped" switching is to enable the receiving device to cross-fade

the two sets of audio data, providing a relatively more smooth transition experience for a listener.

Accordingly, when viewed as a whole, as required by law, the invention being claimed are methods of operation for audio receivers and servers (or the receivers/servers themselves), wherein the methods of operations include the novel operations of switching between audio data of different sampling rates reflective of the bandwidth condition of the communication link between the devices. Further the switching operations include the intentional overlapping of the audio data to allow a more smooth transition experience to be provided to the ultimate listener.

Assuming the Examiner's readings of the cited references are all correct, i.e. Frederick teaches an audio mixer for mixing multiple audio data streams, Laroche teaches re-sampling, Bhadlamaker teaches blending overlapping segment, and Shepherd teaches concealing an error in an audio stream, however, by virtue of the limited teachings of Shepherd, for reasons set forth below, the combination nonetheless does not suggest the claimed invention to one of ordinary skill in the art.

As the Examiner noted, Shepherd merely teaches concealing an error in an audio stream by inserting pre-determined data pre-included by the sender for the missing data. Under Shepherd, the monitor and detection of error condition is performed by the receiving device. The corrective action is taken by the receiving device. The sender merely has an invariant responsibility of synthesizing and provide the pre-determined error correction data for each packet.

Therefore, even if we are to assume the combination (method of Shepherd in particular) suggests anticipation of changing communication link condition, the

combination nonetheless does not suggest to one of ordinary skill to address the potential change in communication link condition with the sender having the active monitor and detection responsibilities, as well as a variant responsibility in terms of what it sends. Accordingly, one of ordinary skill in the art would not be motivated to string together the overlapping, re-sampling and cross fading teachings of Bhadkamkar, Laroche, Frederick to arrive at the present invention.

Applicants respectfully submit such an assertion is an impermissible application of hindsight, using Applicants' teachings as a roadmap.

In summary, for the foregoing reasons, when properly viewed as a whole, as required by law, Applicants submit independent claims 1, 3, 7, 11 and 15 are not obvious, and patentable over the prior art.

Moreover, for independent claims 3 and 7, they have been amended to further include the novel dynamic temporal employment of the old and new stream buffers by the receiving device to exploit the novel "overlapped" switching performed by the sender, rendering these claims further patentable over the cited references.

Claims 2, 4-6, 8-9, 12-14 and 16-20 are dependent on claims 1, 3, 7, 11 and 15 respectively, incorporating their limitations. Therefore, for at least the same reasons, claims 2, 4-6, 8-9, 12-14 and 16-20 are patentable over the cited references.

New claims 21-28 contain the distinguishing limitations earlier discussed. For at least the same reasons, claims 21-28 are patentable over the cited references.


Conclusion

In view of the foregoing, Applicant respectfully submits that claims 1-9, ,and 11-28 are in condition for allowance. Early issuance of the Notice of Allowance is respectfully requested.

Please charge any shortages and credit any overages to Deposit Account No. 500393.

Respectfully submitted,
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